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TRIAL CHAMBER II

Before: Judge María del Socorro Flores Liera, Presiding Judge
Judge Kimberly Prost
Judge Nicolas Guillou

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN*

**URGENT
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With Public Annex**

Registry Observations on the Trust Fund for Victims' Draft Implementation Plan

Source: Registry

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. Pursuant to Trial Chamber IX's "Reparations Order" ("Chamber" and "Order", respectively) issued on 28 February 2024 in the case of *The Prosecutor v. Dominic Ongwen* ("Case"),¹ the Registry hereby submits its observations on the Trust Fund for Victims' Draft Implementation Plan² ("TFV" and "DIP", respectively).

II. Procedural History

2. On 28 February 2024, the Chamber issued the Order in which it, *inter alia*, instructed: *i*) the TFV "to prepare a DIP with the details of the rehabilitation and symbolic measures to be included within the collective community-based reparations awarded and submit it for the Chamber's approval within six months from the delivery of [the] Order",³ in the form of a chart attached as Annex III to the Order,⁴ and *ii*) the parties and the Registry to provide "any concise objections or observations [...] in relation to each proposal" in the DIP within 30 days from its submission.⁵
3. On 3 September 2024, the TFV submitted the DIP.⁶

III. Applicable Law

4. The Registry submits the present filing pursuant to the Order.

¹ Trial Chamber IX, "Reparations Order", 28 February 2024, ICC-02/04-01/15-2074, paras 797-802 and p. 360.

² TFV, "Annex to Trust Fund for Victims' submission of Draft Implementation Plan", notified on 4 September 2024, ICC-02/04-01/15-2099-Anx ("DIP").

³ Order, para. 797.

⁴ *Id.*, para. 800.

⁵ *Id.*, paras. 797 and 800.

⁶ *Supra*, fn. 2.

IV. Submissions

5. The Registry acknowledges the Chamber's instruction to provide objections and observations in the DIP chart. Given that its observations on the TFV's DIP and the accompanying cover filing are general in nature and not limited to specific projects proposed, the Registry consolidated its views in the present document. A summary of the Registry's observations is included in the DIP chart transmitted as annex to the present cover filing.
6. As a preliminary remark, the Registry supports the TFV's plan to put in place programme-wide participatory mechanisms whereby the "community of beneficiaries [will be] actively involved in the design, selection, implementation and monitoring, as appropriate, of reparations measures".⁷ As previously expressed, the Registry strongly believes such active participation of victims to be crucial for a meaningful reparations process.⁸
7. In light of the continued and close collaboration with the TFV following the issuance of the Order, the Registry also reiterates its willingness and preparedness to assist and collaborate with the TFV in the implementation of reparations, as this is a key and common objective enshrined in the Rome Statute.
8. In the present filing, the Registry provides its observations on four aspects: *i*) views on reparations previously expressed by victims; *ii*) the feedback mechanism proposed in the DIP; *iii*) communications; and *iv*) the TFV's first precondition for the DIP, i.e., the "receipt of prioritized list of eligible victims from VPRS"⁹.

⁷ DIP, p. 9.

⁸ Registry, "Registry's Mapping Report and Submission on Reparations", 6 December 2021, ICC-02/04-01/15-1919-AnxII, para. 3.

⁹ DIP, p. 10.

i. Views on reparations previously expressed by victims

9. The Registry continued engaging with victims and survivors on various matters related to identification and eligibility, but it did not conduct consultations with victims on types and modalities of reparations after the Order was issued. Therefore, it is not in a position to bring forward views and concerns newly expressed by victims as to the reparations measures ordered in the Case or the DIP.
10. The Registry recalls nonetheless that the Victims Participation and Reparations Section (“VPRS”) conducted consultations with victims in the four case locations¹⁰ and thematic crimes victims¹¹ in October 2021, and compiled the victims’ views on desired measures of reparations in the Registry submissions on reparations (“Registry Submissions”).¹²
11. The Registry notes that the DIP generally aligns with the vast majority of such views, concerns and wishes of victims, but recognises the strategic nature of the document whereby practical details will continue to be developed and refined. To this end, the Registry wishes to recall four aspects that were consistently stressed and requested by victims and interlocutors in the October 2021 consultations: *i*) physical proximity, i.e., having reparations delivered at or close to the locations where victims reside;¹³ *ii*) holistic measures, which can repair the complex and multifaceted types of harm suffered by the diverse categories of victims;¹⁴ *iii*) an intersectional approach that accounts for the different layers of needs and

¹⁰ Pajule and Lapul, Abok, Odek and Lukodi internally displaced persons (“IDP”) camps.

¹¹ Victims of sexual and gender based crimes and former child soldiers.

¹² Registry, “Registry’s Mapping Report and Submission on Reparations”, 6 December 2021, ICC-02/04-01/15-1919-AnxII, paras. 34-47.

¹³ Registry Submissions, para. 47.

¹⁴ *Id.*, para. 37.

vulnerabilities that victims may have;¹⁵ and *iv*) sustainable reparations that are monitored and followed up to ensure lasting success.¹⁶

12. For the first point in particular, while the DIP does not currently specify locations for the various reparations programs, the Registry notes that the TFV is considering “appropriate” locations where victims reside, alongside other modalities such as deployments of medical personnel and mobile medical teams.¹⁷ During the consultations in October 2021, victims consistently underscored the importance of physical proximity, with many, for instance, stating that the Gulu¹⁸ referral hospital is too far from the location of the four former IDP camps.¹⁹ Furthermore, the thematic crimes victims eligible for reparations in the Case are scattered throughout Northern Uganda, some of them in extremely remote locations. Any initiative to bring the reparations programmes as close as possible to the locations of beneficiaries would thus be welcomed by the victims. To this end, throughout the administrative eligibility process, the Registry will keep the TFV informed of all locations where victims reside.
13. Furthermore, based on the October 2021 consultations, the Registry recommends two additional types of reparations measures be included in the DIP: *i*) assistance for children born in captivity to obtain birth certificates and national ID documents,²⁰ and *ii*) assistance with moving the remains of the individuals killed in the attacks to their original places of residence.²¹

¹⁵ *Id.*, para. 24. The Registry highlights in particular the vulnerable situation of elderly parents, widows, widowers and orphans whose family members were killed or abducted and never returned, who have thus become completely abandoned and unable to meet their most basic needs.

¹⁶ *Id.*, para. 38.

¹⁷ See, e.g., DIP, pp. 3, 9.

¹⁸ The Registry notes a seeming inconsistency in that Gulu is specifically mentioned as a location for Measures Medical 2 and 3, but not for Measures Medical 1.

¹⁹ Registry Submissions, para. 47.

²⁰ *Id.*

²¹ *Id.*

ii. *Feedback mechanism*

14. The Registry supports the initiative of the feedback mechanism proposed “to provide the appropriate channel for beneficiaries to directly ask for information, provide feedback, ask questions, convey complaints or queries about the [implementing partners] or the TFV”²² and stands ready to collaborate with the TFV in its design and implementation.
15. However, the Registry would recommend a feedback mechanism that is: *i*) centralised and independent;²³ *ii*) covers all actors involved at the reparations stage including the Registry, the Legal Representatives of Victims (“LRVs”)²⁴ and the intermediaries of all actors involved; and *iii*) available in relation to all reparations measures implemented in the case²⁵ and throughout the entire duration of the implementation phase of those measures.²⁶
16. The Registry posits that assessing victims and survivors’ satisfaction throughout the entire reparations phase and adapting processes in light of their feedback would be key elements for meaningful reparations. Therefore, in addition to, or as part of the feedback mechanism, the Registry would also recommend incorporating satisfaction surveys and/or using other tools aimed at measuring

²² See, *e.g.*, DIP, p. 2.

²³ The Registry recommends that the feedback mechanism is not administered by the TFV implementing partners in order to ensure its neutrality and avoid any biases.

²⁴ The Registry notes that, at the present stage of the reparations proceedings, both teams of legal representatives of victims in the Case continue to be involved by, *inter alia*, providing to the VPRS information about the current situation of their clients, which enables the VPRS to conduct the priority and dire needs assessment of participating victims; providing supplementary information regarding their clients when required; providing resumptions of action when applicable. Moreover, the OPCV will continue to be involved throughout the reparations phase by providing general support and assistance to any potential beneficiary during the administrative eligibility assessment, particularly regarding those assessed as non-eligible.

²⁵ The Registry notes that the feedback mechanism is not expressly mentioned in the DIP in relation to the psychological rehabilitation measures and psychosocial activities, as well as the socio-economic rehabilitation measures and livelihood activities, but that this is likely because the TFV chose not to reiterate all the steps and timelines set out under the physical reparations measures.

²⁶ The Registry observes that for Measures Symbolic 1-3, the feedback mechanism has a predetermined duration of “6 to 10 months”, despite the fact that the duration of the implementation phase of these measures has not yet been determined.

satisfaction such as focus group consultations. The resulting data would help inform all actors involved as to the quality and progress of the reparations implementation in the Case and enrich future reparations processes before the Court.

iii. Communications

17. The Registry has taken note that the DIP includes several communication elements which the TFV foresees conducting together, or in close coordination with the Registry.²⁷ The Registry stands ready to collaborate and cooperate with the TFV in the planning and eventual implementation of these elements. Indeed, based on its longstanding outreach activities in Northern Uganda, the Registry considers effective communication an essential aspect of a successful and sustainable reparations process.

18. With its extensive expertise, the Registry is well-equipped to support or collaborate with the TFV on communication and information campaigns. In many ways, this would be a natural continuation of the outreach work carried out in Northern Uganda by the Registry's Public Information and Outreach Section ("PIOS") since the beginning of the Case. Specifically, since the issuance of the Order, PIOS has been conducting frequent outreach activities in the communities affected by the crimes for which Mr Ongwen was convicted, focusing on informing them about the contents of the Order.

²⁷ DIP, Measure Programme-wide: "In close cooperation with the Registry, ensure information about reparations is disseminated to beneficiaries and relevant stakeholders, as appropriate (duration: throughout the life of the programme)."; Measures Medical 1 and 2: "Information campaign together with PIOS on upcoming project and, if applicable, programme completion (duration 12 months)"; Measures Psychological 1-4: "TFV and IP develop information campaign and mobilisation activities in close coordination with Registry and after consultation with relevant Ugandan health authorities and healthcare providers (duration 15 to 20 months)"; Measures Socio-economic 1 and 2: "TFV and IP, in close coordination with Registry conduct communication campaign on the TFV's socio-economic reparation methodology"; Measures Symbolic 1-3: "Information campaign together with PIOS on upcoming project and, if applicable, programme completion (duration 12 months)".

19. The Registry is fully committed to providing support for, and will prioritise the DIP's communication elements within available resources, and subject to competing demands, in the context of PIOS activities in Uganda.

*iv. DIP Precondition 1: "Receipt of prioritized list of eligible victims from VPRS"*²⁸

20. Since the TFV's first precondition for the DIP concerns the VPRS, the Registry wishes to inform the Chamber on the progress of VPRS activities relating to participating victims in the Case and the identification of new beneficiaries.

21. For participating victims, the VPRS has conducted *de novo* eligibility assessments for all thematic only participating victims²⁹ and has been in communication with the LRVs for supplementary information needed for its final eligibility determination.³⁰ The VPRS has also assessed all resumptions of action received to date from the External LRVs³¹ and will proceed in a similar fashion for the resumptions of actions received from the Office for Public Counsel for Victims ("OPCV").³²

22. For priority assessments, the VPRS is currently reviewing the vulnerability and dire needs of the participating victims represented by the OPCV based on information received from the latter³³ and will start this analysis for the participating victims represented by the External LRVs as soon as it receives the

²⁸ DIP, p. 10.

²⁹ As previously reported, the VPRS has not conducted a *de novo* eligibility assessment for participating victims who suffered harm as a result of the attacks on the four IDP camps for which Mr Ongwen was convicted. See Registry, "Registry Submissions pursuant to Reparations Order ICC-02/04-01/15-2074", 2 April 2024, ICC-02/04-01/15-2082, para. 14.

³⁰ Email from VPRS to the Office of Public Counsel for Victims ("OPCV") of 16 July 2024 at 08h27 and email from VPRS to Joseph Manoba and Francisco Cox ("External LRVs") of 16 July 2024 at 08h27. By email of 20 September 2024 at 09h29, the OPCV shared their views on the VPRS assessment and informed the VPRS that supplementary information will be sent in relation to a number of victim applications.

³¹ Joseph Akwenyu Manoba and Francisco Cox.

³² Resumptions of action received by email from the OPCV to the VPRS on 3 October 2024 at 14h10.

³³ Emails from the OPCV to the VPRS of 12 and 18 July 2024 at 18h47 and 08h56, respectively.

relevant information. Once both the eligibility and priority assessments have been completed for the participating victims, the VPRS will begin its transmissions to the TFV in the order of priority established in the Order.³⁴

23. In parallel, the VPRS has continued its preparatory activities in relation to the identification and eligibility assessment of potential beneficiaries of reparations. The VPRS has engaged with intermediaries, victims-led community-based organisations and other civil society organisations to consolidate its network of partners instrumental for the identification process. The VPRS has also continued its efforts to secure human resources on the ground in Northern Uganda. Once the team is operational, the VPRS will start collecting forms from newly identified beneficiaries.
24. As the implementation of reparations is contingent on the pace of fundraising and the transmission of VPRS eligibility decisions to the TFV is designed to be on a rolling basis, the Registry observes that the VPRS will be making transmissions on some or many of the beneficiaries while the TFV's fundraising is still ongoing. Relatedly, the Registry takes note of the TFV's remarks that "victims who did not participate in the proceedings, in particular, expressed their eagerness to be identified and recognised as victims through the eligibility process, without delay"³⁵ and that "consultation participants also understood that the implementation will depend on the financing available to the TFV and that, accordingly, it could take a considerable amount of time until reparations are implemented and may reach them."³⁶
25. The Registry remains committed to conducting its identification and eligibility process in a timely manner. It has hence informed the TFV that, subject to available resources, the VPRS will continue to execute its mandate without delay and

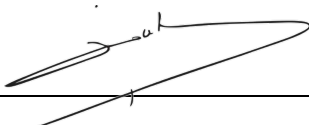
³⁴ The date of the first transmission is also contingent on VPRS receiving from the TFV a list containing the type of information the latter would like the former to include in its eligibility decision tables.

³⁵ TFV, "Trust Fund for Victims' submission of Draft Implementation Plan", dated 3 September 2024 and notified on 4 September 2024, ICC-02/04-01/15-2099, para. 28.

³⁶ *Id.*, para. 26.

transmit information on eligible beneficiaries to the TFV as soon as practicable and on a rolling basis.³⁷ Key messages have also been prepared, in collaboration with the TFV and the LRVs, to ensure that victims and survivors receive clear information with respect to the timeline for the implementation of reparations and, in general, to all matters related to reparations. The messages will be posted on the Court's website and continue to be updated throughout the reparations process.

26. Should the Chamber approve the DIP, the Registry is fully committed to working with the TFV and other partners, within the limits of available resources, to find workable and effective solutions with a view to contributing to the successful implementation of the Reparations Order.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of Osvaldo Zavala Giler, Registrar

Dated this 3 October 2024

At The Hague, The Netherlands

³⁷ The VPRS will transmit to the TFV separate eligibility decision tables (Excel charts) per each of the four priority categories established in the Order. The VPRS notes that category 1 (dire needs) victims may continue to be identified up to the end of the identification process; these victims will be assessed and transmitted as the top priority throughout the administrative eligibility process.